

Docket No: 00-0592
Bench Date: 1/23/2001
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MEMORANDUM

TO: The Commission

FROM: Eve Moran and Leslie Haynes, Hearing Examiners

DATE: January 22, 2001

SUBJECT: Responses to Questions of Commissioner Squires, dated January 19, 2001

(1) Various parties have indicated on the record that the Change Management Process ("CMP") only allows for the protest of a planned OSS enhancement and no opportunity for CLECs to propose modifications. The Examiners' proposed order, however, rules that the record demonstrates that change requests from CLECs were not only received within the context of the CMP, but that some proposed changes were implemented as a part of the upcoming March release.

Question (1)(a):

Assuming that the Commission decides to dispense with Ameritech's monitored testing proposal (see Issue #2 - Joint Testing), could a CLEC subsequently propose a modification to provide for monitored testing via the CMP?

Response:

No, not according to our review of the CMP (and no proposal of this type was raised by any of the parties). To be sure, the CMP addresses joint testing in several of its provisions. Those provisions, however, do not address the manner in which joint testing will be performed. They simply identify which releases will have joint testing and the timeframes that will be available. (Section 3.3.7, Section 4.2.5, Section 4.3.3.4). Section 6.6 of the CMP deals with the general provisions of joint testing and provides for an OIS related to joint testing. (Section 6.6.4). Our reading of this section, however, leads us to believe that the OIS is intended to provide CLECs an opportunity to stop a release if joint testing shows that something is wrong with the planned release. It does not appear to be the means by which to change the manner in which joint testing is performed. Furthermore, Section 6.6.3 allows individual CLECs to set up test plans, however, these test plans do not change the overall testing environment that would affect all CLECs. It does not seem that a change in the amount of monitoring for

a particular CLEC could be instituted under this provision since monitoring is either on or off for all CLECs.

The general scope of the CMP, as set out in Section 2.0, includes "pre-ordering, ordering, provisioning and maintenance electronic interfaces. . ." (CMP, p. 6, Section 2.0) While the joint testing environment does not appear to fall within this scope, there is the availability of the Regional CLEC User Forum (CUF). This CUF, referred to in Section 2.3 of the CMP, provides a means for the CLECs and/or SBC to resolve issues, which impact daily business practices such as: network operations, business processes, maintenance and repair, billing and others. (Non-OSS Change Management Process, Attachment K to the POR, p. 1). Again, no party has flushed out the workings of this mechanism and its potential for dealing with such issues.

Because this exact issue was raised in the context of the POR and not the CMP, it is a matter to be resolved in this order. (See Plan of Record, III. Future Method of Operation, Section A Overview - CLEC Joint Testing).

Question (1)(b):

Per the CMP, would a CLEC be allowed to call for an OIS vote pertaining to a proposed modification of its own over the objection of Ameritech?

Response:

Yes, an OIS vote certainly would be brought over the objection of Ameritech. Where a CLEC proposed modification is not adopted by Ameritech, a CLEC would institute an OIS vote. Pursuant to Section 7.1.1 of the CMP, the vote is initiated with written notice that includes "the disputing party's reason(s) for raising the dispute and any alternative recommendations." (CMP, p. 38, Section 7.1.1, emphasis added).

Question (1)(c):

Assuming that a CLEC is successful in implementing monitored testing through the CMP (see 1(a) above), would the CMP provide CLECs with an appropriate mechanism to determine the percentage of time in which monitored testing would be provided?

Response:

Yes, assuming that the CMP is the appropriate forum, a certain percentage for non-monitoring could be agreed to by all parties through Comments and the OIS vote. In direct response to the question however, there is no "mechanism" for determining the right percentage - it is only derived after considering each party's needs and interests along with any system constraints or limitations.

Question (1)(d):

The proposed order rules that if Ameritech and various CLECs are unable to reach agreement for the ratio of monitored and unmonitored testing, the percentage of time for non-monitoring will automatically be increased [from 10%] to 30% (PEPO at 37). How was this 30% default established?

Response:

This percentage for non-monitoring arises from a judgment call. It adds finality to the process in the event that the parties are unable to reach an agreement. It is no more correct than 10% or 50% however it is based on what we know of the monitoring process, its purposes and how it works. The CLECs claim that 10% is too low, however we are reluctant to go as high as 50% when so few CLECs are actually represented in this proceeding. On all counts, a 30% window seems reasonable.

(2) Issue #4 - OIS Voting (quorum requirement)

(2)(a): The Examiners conclude that, "...in our view, a quorum requirement is the only way to ensure such meaningful participation [in the CMP process]." (PEPO at 48).

Question (2)(a)(i):

Did the Examiners consider the CLECs' inherent business interest, to protect the interface they utilize to place orders with Ameritech, as an incentive to participate in the CMP process?

Response:

Yes, and that is precisely what makes a quorum likely to be met in these matters. We agree that the sentence at issue should be modified to read as follows:

To this end and in our view, a quorum requirement ~~is the only way to ensure such meaningful participation in this instance~~ does nothing more than reflect the means for arriving at the "group consensus" - which is a key objective under the CMP. (See, CMP, Section 1.0 Purpose). (Final PEPO at 44).

(2)(b): Ameritech's amended quorum proposal states that the following could constitute a quorum: the average number of CLECs in attendance at the last three regional meetings." (emphasis added).

Question (2)(b)(i):

Assuming that an average of only one qualified CLEC participated in the last three regional meetings, wouldn't the quorum requirement for an OIS vote be one qualified CLEC?

Response:

The assumption is that only one (1) qualified CLEC participates in the last three regional meetings. We do not view the assumption as valid.

Is it possible for only one CLEC to participate at a regional meeting? Yes, on a theoretical basis.

Is it probable, i.e., "more likely than not" for only one CLEC to participate? No, not on a practical basis (and the way that the law views such matters).

Indeed, we consider it highly unlikely that a "meeting" would even be held with only one CLEC in attendance.

Presumably, attendance at such meetings must reach some meaningful number otherwise AI would not have proposed this additional measure (which incidentally comports with Roberts Rules of Order). To be sure none of the CLECs or Staff informed us of what the attendance numbers were at these regional forums.

Question (2)(b)(ii):

Does the record evidence contain information regarding attendance at "regional meetings?" If so, please provide a comparison of the CLEC attendance at Illinois-specific OSS meetings.

Response:

With its final comments, AI filed an appendix containing rebuttal facts that included the number of CLEC attendees at three "change management meetings" that took place on August 15, 2000 (17 companies); September 19, 2000 (25 companies), and October 17, 2000 (29 companies). The CLECs filed objection to this evidence based on lateness (inability to reply).

The Hearing Examiner ruled in favor of the CLECs - noting that while such evidence was relevant and material, its lateness precluded admission. (At the time, there was an real urgency to resolve these issues). In any event, AI's proposal did not directly implicate such data.

Circumstances have now changed. Given the features of AI's latest proposal which would directly measure attendance at such meetings, this evidence is directly on point and should be made part of the record. Hence, we entered a ruling today reversing our position on the basis of this new development.

We also believe that, for the future, information regarding attendance at such meetings would be available from Internet postings and other sources.

Question (2)(c):

On page 46 of the PEPO (now page 41), the Examiners state that, should a “truly flawed” change be implemented as a result of the CLECs being unable to effectuate a quorum, versioning would allow for affected CLECs to simply use the previous version of the interface until the alleged flaw is resolved. However, if the Commission were to dispense with the quorum requirement for an OIS vote and a “truly flawed” release is implemented (due to lack of meaningful participation, or otherwise), would versioning provide CLECs with the same relief?

Response:

We regret that our observations on this aspect of the issue are unclear. In other words, we do not believe that implementation of a truly “flawed” release would be made possible simply as a result of the quorum requirement.

If a release is truly flawed - most, if not all, CLECs will come on board and seek to modify or stop implementation. Such action would be essential to their interests. Stated another way, a truly flawed release will inevitably draw criticism and overwhelming participation of the CLEC community in an OIS vote. In such instances, meeting the quorum requirement will not be an issue.

On the other hand, in the situation where a single CLEC calls for an OIS vote to stop a release and no other CLEC responds or joins in the vote - such release is not flawed as to all. It simply, for whatever reason, does not work with that particular CLEC’s systems.

The point we make on page 41, is that even when one CLEC calls for a vote and no one else joins in - it is not left without recourse. While everyone else moves to the new release (with which they are satisfied) this CLEC can use versioning and stay on the current system until its own peculiar problems with the new release are resolved.

NOTE:

In reviewing the language under Issue 4, we noticed that certain clauses appearing on page 42 of the PEPO were incomplete. We correct such errors as follows:

1. 50 % of the number of qualified CLECs;
2. six (6) qualified CLECs (in the Ameritech region);

EM/LH:fs